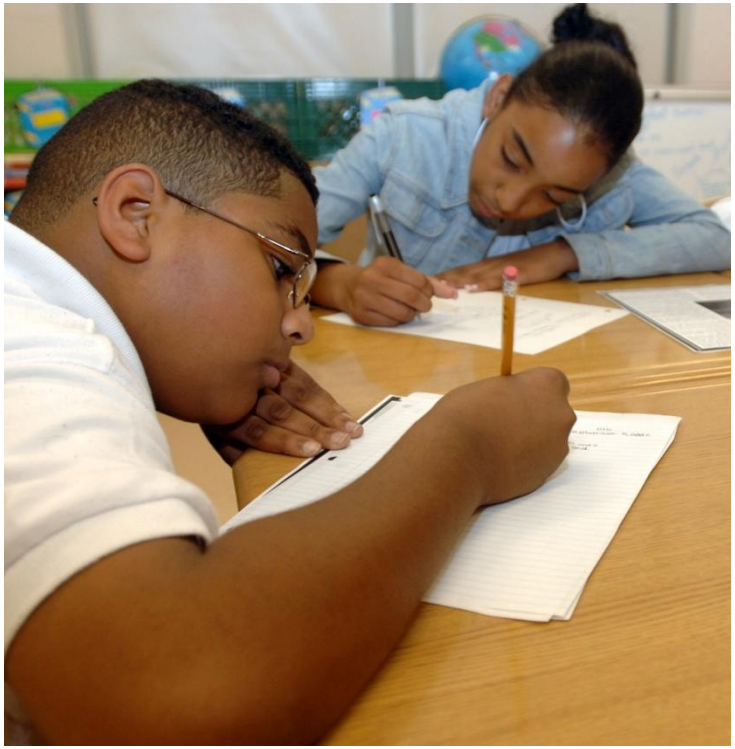
STUDENT DISCIPLINE: What Your Charter School Needs to Know About Suspensions, Expulsions, and Due Process



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STUDENT DISCIPLINE SESSION OVERVIEW

- **SOURCES FOR STUDENT DISCIPLINE COMPLIANCE**
  - Federal Law
  - State Law
  - Contract
- **STATE AND CONTRACT RESPONSIBILITIES FOR STUDENT DISCIPLINE**
  - the NYS Charter Schools Act
  - the Charter Agreement
- **RESPONSIBILITIES UNDER FEDERAL LAWS AND REGULATIONS**
  - Federal Case Law (Due Process)
    - Short-term suspensions
    - Longer-term suspensions
  - Individuals with Disabilities Education Act (IDEA)
    - Removals for 10 days or less
    - Removals for more than 10 days cumulatively
    - Removals for more than 10 days consecutively
  - Gun-Free Schools Act

WHAT ARE SOURCES OF REQUIREMENTS FOR STUDENT-DISCIPLINE COMPLIANCE?

Federal

- Federal Case Law (Court)
- Individuals with Disabilities Education Act (IDEA)
- Gun-Free Schools Act

State

- New York State Charter Schools Act

Contract

- Charter School Agreement

CHARTER SCHOOL STUDENT DISCIPLINE POLICY AND PRACTICE

FEDERAL RESPONSIBILITIES UNDER THE NYS CHARTER SCHOOL ACT AND THE CHARTER AGREEMENT

FEDERAL LAWS AND REGULATIONS

New York State Law and the Charter Agreement require that charter schools comply with the requirements of Due Process and with federal laws and regulations governing the placement of students with disabilities.

Charter Schools must have disciplinary rules and procedures consistent with Due Process and federal laws at the time of application and submission.

NEW YORK EDUCATION LAW, § 2851(2)(h), ELIGIBLE APPLICANTS, APPLICATIONS, SUBMISSIONS:

"The rules and procedures by which students may be disciplined, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with federal laws and regulations governing the placement of students with disabilities."

CHARTER AGREEMENT, SECTION 2.8, DISCIPLINARY CODE:

"…The rules and procedures shall be consistent with the requirements of due process, the provision of alternative instruction and with federal laws and regulations governing the placement of students with disabilities. …"

Once Charter Schools receive their charters, they are further obligated to comply with the requirements of Due Process and federal laws and regulations concerning student discipline through their Charter Agreements

FEDERAL CASE LAW: DUE PROCESS

<u>Supreme Court Case</u>: *Goss v. Lopez*, 419 U.S. 565 (1975):

BRIEF SUMMARY

- In Ohio, a state law allowed schools to suspend students from school for up to 10 days without notice or an opportunity to be heard. When Dwight Lopez and other students were suspended accordingly, they brought a class-action suit on the basis of the Due Process Clause of the 14th Amendment of the United States Constitution.

SUPREME COURT FINDINGS

- **<u>Due Process Clause Applies:</u>** "[School officials] must recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause."

- **<u>Notice And Opportunity To Be Heard</u>:** "The fundamental requisite of due process of law is the opportunity to be heard", a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to … contest." At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."

FEDERAL CASE LAW: DUE PROCESS FOR SHORT-TERM SUSPENSIONS

SUPREME COURT CASE LAW

The Supreme Court held that "[d]ue process requires, in connection with a suspension of 10 days or less that

1. the student be given oral or written notice of the charges against him and
2. if he denies them, an explanation of the evidence the authorities have and
3. an opportunity to present his version."

SUPREME COURT GUIDANCE

- "In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred."
- "Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable."

FEDERAL CASE LAW: DUE PROCESS FOR LONGER-TERM SUSPENSIONS

The Supreme Court in *Goss v. Lopez* limited its decision to short suspensions, but it contemplated more formal due process procedures for longer suspensions:

> "We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures."

In the absence of more clarity, Charter Schools still remain responsible for providing students with the requirements of due process for suspensions that exceed 10 days. Failure to provide sufficient protections may result in a violation of the 14th Amendment of the United States Constitution.

Therefore, in addition to the required notice, which should be in writing, and opportunity to be heard, Charter Schools should provide students facing longer-term suspensions and expulsions with full Due Process protections, such as those that the Supreme Court mentioned in its opinion in *Goss v. Lopez*, which include the opportunity:

- to secure counsel
- to confront and cross-examine witnesses supporting the charge
- to call his own witnesses to verify his version of the incident

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

All Charter Schools must comply with the requirements of the Individuals with Disabilities Education Act (IDEA), 34 CFR §§ 300.530-300.537.

APPLICABILITY: IDEA protections apply

- to students with disabilities, and
- to students for whom the school is deemed to have knowledge of a disability:

The school is deemed to have knowledge of a disability if	**The student is not presumed to have a disability if**
The parent expressed concern in writing to the appropriate school personnel (supervisory or administrative); OR	It was determined that the student is not a student with a disability; OR
The parent has requested an evaluation of the student either through the Charter School or through the CSE; OR	The parent has not allowed an evaluation; OR
The teacher or student or other Charter School or DOE personnel expressed specific concerns about a pattern of behavior to the CSE.	The parent refused to allow the provision of special education services

IDEA: A STUDENT WITH A DISABILITY VIOLATES THE CODE OF CONDUCT AND IS REMOVED CONSISTENT WITH DUE PROCESS

The removal is for (a) 10 or fewer *consecutive* days, AND (b) 10 or fewer *cumulative* school days in a school year.

The Charter School may remove the student.

Due process is required.

The Charter School must provide services to the student with the disability as it does to students without disabilities.

Alternative instruction must be provided for a minimum of 2 hours per day.

IDEA: A STUDENT WITH A DISABILITY VIOLATES THE CODE OF CONDUCT AND IS REMOVED CONSISTENT WITH DUE PROCESS

The removal results in more than 10 *cumulative* school days in a school year.

(If the removal is for more than 10 consecutive days, then proceed directly to SLIDE 12.)

The Charter School must determine whether a pattern of disciplinary removals exists

(1) IS THE MISCONDUCT SUBSTANTIALLY SIMILAR TO MISCONDUCT IN PRIOR DISCIPLINARY REMOVALS? IF YES, CONTINUE→

(2) DOES THE REMOVAL CONSTITUTE A PATTERN, CONSIDERING, AMONG OTHER THINGS, THE FOLLOWING FACTORS:

- **LENGTH OF THE REMOVAL**
- **THE TOTAL AMOUNT OF TIME THAT THE STUDENT HAS BEEN REMOVED FROM SCHOOL**
- **THE PROXIMITY OF REMOVALS TO ONE ANOTHER**

If the answer is that **NO** pattern exists, then the Charter School may remove the student

Charters Schools must determine and provide special education services so the student continues to make progress towards the goals on the student's IEP and continues to participate in the general education curriculum.

If the answer is **YES**, a pattern exists, then a disciplinary change of placement has occurred

CONTINUE

IDEA: A STUDENT WITH A DISABILITY VIOLATES THE CODE OF CONDUCT AND IS REMOVED CONSISTENT WITH DUE PROCESS

The removal is for more than 10 *cumulative* school days in a school year AND a pattern of disciplinary removals exists

The removal is for more than 10 *consecutive* school days

A disciplinary change of placement has occurred

NOTICE TO PARENTS AND DOE

The Charter School must send (a) a notice of discipline and (b) a procedural safeguards notice to the parents.

The Charter School must notify the DOE immediately, in writing, upon the earlier of (1) the actual removal of the Student or (2) the decision to remove and change the placement of the Student.

In addition, the Charter School must notify the DOE of which personnel from the Charter School will be part of the MDR Team.

Manifestation Determination Review (MDR)

The Manifestation Determination Review (MDR) Team must conduct an MDR within 10 days of (a) the removal or (b) the decision to remove and change the placement of the student, whichever comes first. If the student has not been removed yet, the MDR must happen before the removal can take place.

Charter School personnel, knowledgeable about the student's history, must provide at the MDR documents and information about the incident, precipitating events, and other behavioral issues.

The MDR Team includes, but is not limited to, the parents, relevant personnel from DOE, relevant personnel (including the student's teachers) from the Charter School, and relevant members of the student's IEP team.

The MDR Team reviews the student's file and determines whether the misconduct was a manifestation of the student's disability by answering the following two questions:

(1) WAS THE CONDUCT IN QUESTION A DIRECT RESULT OF THE CHARTER SCHOOL'S FAILURE TO IMPLEMENT THE IEP?

(2) WAS THE CONDUCT IN QUESTION CAUSED BY, OR DID IT HAVE A DIRECT AND SUBSTANTIAL RELATIONSHIP TO, THE DISABILITY OF THE STUDENT?

IDEA: RESPONSIBILITIES AFTER THE MANIFESTATION DETERMINATION REVIEW

If the answer to both questions is **NO**, then the Charter School may remove the student

The CSE team, including the parents and relevant Charter School personnel, develops a plan to provide services so the student continues to make progress towards the goals on the student's IEP and continues to participate in the general education curriculum.

The Charter School must implement the services recommended by the CSE during the length of the disciplinary change of placement.

At least 2 hours of instruction per day are required; however, where a student has an IEP, additional hours may be needed to provide the services determined necessary by the CSE team.

IDEA: RESPONSIBILITIES AFTER THE MANIFESTATION DETERMINATION REVIEW

If the answer to <u>either</u> question is **YES**, then the Charter School <u>may not</u> remove the student

CSE and Charter School must remedy the deficiencies in the IEP and implementation of the IEP

The CSE must conduct a Functional Behavior Assessment and develop or modify a Behavioral Intervention Plan, and then the Charter School must implement the Behavioral Intervention Plan.

The Charter School must return the student to the original placement

IDEA: INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child-

(1) Carries a weapon to or possesses a weapon at school, on school premises, or at a school function; OR

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; OR

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

An MDR is still required. If the behavior is a manifestation of the disability, then a Functional Behavior Assessment is required, and the Behavioral Intervention Plan must be developed and implemented.

GUN-FREE SCHOOLS ACT

In general

- After all due process requirements are met, a Charter School must suspend from school for a period of not less than 1 year a student who is determined to have brought a firearm to school or to have possessed a firearm at school.
- Exception: The Chief Administering Officer may modify such suspension requirement for a student on a case-by-case basis if such modification is in writing.

Questions and Answers

Contact us for more information

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